

C. DUKES SCOTT  
EXECUTIVE DIRECTOR

P.O. Box 11263  
Columbia, S.C. 29211



Phone: (803) 737-0800  
Fax: (803) 737-0801

DAN E. ARNETT  
CHIEF OF STAFF

177386

January 12, 2006

**VIA HAND DELIVERY**

The Honorable Charles L.A. Terreni  
Chief Clerk/Administrator  
South Carolina Public Service Commission  
101 Executive Center Dr., Suite 100  
Columbia, SC 29210

Re: Petition of Budget Phone, Incorporated for Designation as an Eligible  
Telecommunications Carrier  
**Docket No. 2005-219-C**

Dear Mr. Terreni:

For your docket, please find enclosed the original and twenty-five (25) copies of the Direct Testimony and Exhibits of Mak Moore in the above referenced docket. Also, if you would, please date stamp the extra copy and return it to me via our courier.

Please let me know if you have any questions.

Sincerely,

Nanette S. Edwards

NSE/pjm  
Enclosures

cc: Lance J.M. Steinhart, Esquire  
Margaret M. Fox, Esquire  
Ronald Munn, Jr., Director

RETURN DATE: *OK D. Duke*  
SERVICE: *OK D. Duke*

SC PUBLIC SERVICE  
COMMISSION

2006 JAN 12 AM 11:04

RECEIVED

**BEFORE**  
**THE PUBLIC SERVICE COMMISSION**  
**OF SOUTH CAROLINA**  
**DOCKET NO. 2005-219-C**

RECEIVED  
2006 JAN 12 AM 11:04  
SC PUBLIC SERVICE  
COMMISSION

RE:


Petition of Budget Phone, Inc. for     )  
Designation as an Eligible             )  
Telecommunications Carrier            ) **CERTIFICATE OF SERVICE**  
  )

This is to certify that I, Pamela McMullan, an employee with the Office of Regulatory Staff, have this date served one (1) copy of the **DIRECT TESTIMONY AND EXHIBITS OF MAK MOORE** in the above-referenced matter to the person(s) named below by causing said copy to be deposited in the United States Postal Service, first class postage prepaid and affixed thereto, and addressed as shown below:

Ronald Munn, Jr., Director of Regulatory & Revenue Assurance  
**Budget Phone, Incorporated**  
Post Office Box 19360  
Shreveport, LA 71149

**Margaret M. Fox, Esquire**  
McNair Law Firm  
Post Office Box 11390  
Columbia, SC, 29211

**Lance J.M. Steinhart, Esquire**  
Lance J.M. Steinhart, P.C.  
1720 Windward Concourse, Suite 250  
Alphaetta, GA, 30005

  
\_\_\_\_\_  
Pamela McMullan

January 12, 2006  
Columbia, South Carolina

**THE OFFICE OF REGULATORY STAFF**  
**DIRECT TESTIMONY AND EXHIBITS**  
**OF**  
**Mak Moore**

RECEIVED  
2006 JAN 12 AM 11:04  
SOUTH CAROLINA  
COMMISSION



**DOCKET NO. 2005-219-C**

**Budget Phone Incorporated:  
Petition for designation as an Eligible  
Telecommunications Carrier.**

**TESTIMONY OF MAK MOORE****FOR****THE OFFICE OF REGULATORY STAFF****DOCKET NO. 2005-219-C**

**IN RE: BUDGET PHONE INCORPORATED: PETITION FOR  
DESIGNATION AS AN ELIGIBLE TELECOMMUNICATIONS CARRIER.**

**Q. PLEASE STATE YOUR NAME, BUSINESS ADDRESS AND OCCUPATION.**

A. My name is Mak Moore. My business address is 1441 Main Street, Columbia, South Carolina. I am employed by the Office of Regulatory Staff and I hold the position of Telecommunications Specialist.

**Q. WOULD YOU PLEASE STATE YOUR EDUCATIONAL BACKGROUND  
AND YOUR BUSINESS EXPERIENCE?**

A. I received a B.S. Degree in Engineering from the University of South Carolina in May of 2000, and I earned my Master's Degree in Business Administration also from the University of South Carolina in May of 2005. I was employed by BellSouth as an Outside Plant Engineer from May of 2000 until June of 2003. At that time I was promoted to Network Manager of a customer service area for BellSouth. After one year as a Network Manager, I left BellSouth and accepted employment with the Office of Regulatory Staff in November 2004 to work in the Telecommunications area.

1 **Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?**

2 A. The purpose of my testimony is to provide the Commission with a summary of the  
3 results of the Office of Regulatory Staff's research into Budget Phone's application  
4 for Eligible Telecommunications Carrier designation. Additionally, ORS suggests  
5 that the Commission hold Budget Phone Incorporated's application in abeyance until  
6 such time as the Commission can initiate a rulemaking proceeding to establish a  
7 single set of guidelines by which our state will evaluate all non-rural, landline carrier  
8 applications for designation as an ETC.

9 **Q. BRIEFLY EXPLAIN WHAT ACTIONS THE OFFICE OF REGULATORY**  
10 **STAFF UNDERTOOK IN PREPARATION FOR THIS PROCEEDING.**

11 A. In order to prepare for this hearing, the Office of Regulatory Staff reviewed a recent  
12 order released by the Federal Communications Commission (FCC) relevant to this  
13 matter and investigated the status of the applications Budget Phone has filed with  
14 other state commissions. The status of the Budget Phone applications is noted  
15 below.

16 **Q. CAN YOU SUMMARIZE THE RESULTS OF THE PROCEEDINGS IN**  
17 **OTHER STATES WHERE BUDGET PHONE HAS FILED SIMILAR**  
18 **APPLICATIONS?**

19 A. Yes. At the time of the writing of this testimony, and based on available  
20 information gathered from other state commissions, we have determined that Budget  
21 Phone has filed similar applications in twenty four other states. The status of Budget  
22 Phone's similar applications is as follows:

Application in process	Application Withdrawn	Pending Commission Decision	ETC Designation Granted by the State Commission
California	Arizona	Arkansas	Alabama
New Jersey	Kansas	Georgia	Florida
South Carolina	Michigan	Illinois	Iowa
	Missouri	Indiana	Maryland
	New York	Mississippi	
	Ohio	Nebraska	
	Virginia	New Mexico	
	West Virginia	Pennsylvania	
	Wisconsin	Tennessee	

1  
2 **Q. BRIEFLY EXPLAIN THE ACTIONS TAKEN BY THE FCC THAT MAY BE**  
3 **RELEVANT TO THIS COMMISSION.**

4 A. The FCC in its Report and Order, 05-46, released March 17, 2005, addressed what  
5 the FCC termed the "minimum requirements" for a telecommunications carrier to be  
6 designated as an ETC. The FCC further stated "we encourage states that exercise  
7 jurisdiction over ETC designations pursuant to section 214 (e) (2) of the Act, to  
8 adopt these requirements when deciding whether a common carrier should be  
9 designated as an ETC. We believe that application of these additional requirements  
10 by the Commission (FCC) and state commissions will allow for a more predictable  
11 ETC designation process."<sup>1</sup> However, the FCC did not preclude states from adopting  
12 their own additional guidelines or their own set of guidelines entirely. The FCC

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<sup>1</sup> *In the Matter of Federal-State Joint Board on Universal Service*, Report and Order, CC Docket 96-45 ¶ 1 (rel. March 17, 2005). ("Universal Service Order")

1 acknowledged that "Section 214 (e)(2) of the Act provides state commissions with  
2 the primary responsibility for performing ETC designations."<sup>2</sup>

3 **Q. ARE YOU AWARE OF ANY STATE REGULATORY AGENCIES THAT**  
4 **HAVE ADOPTED IN TOTAL THE FCC'S RECOMMENDED GUIDELINES**  
5 **FOR ETC DESIGNATION?**

6 A. Yes. The Florida Public Service Commission adopted the new high-cost annual  
7 certification and reporting requirements set forth in the FCC's Report and Order CC  
8 Docket No. 05-46 released March 17, 2005 in Order No. PSC-05-0824-FOF-TL. I  
9 have attached the Florida order as exhibit MM-1.

10 **Q. DOES THIS COMMISSION HAVE THE AUTHORITY TO ADD**  
11 **ADDITIONAL REQUIREMENTS TO THE GUIDELINES RECOMMENDED**  
12 **IN THE FCC'S RECENT *UNIVERSAL SERVICE ORDER*?**

13 A. Yes.

14 **Q. DOES BUDGET PHONE'S APPLICATION DEMONSTRATE THAT IT**  
15 **MEETS THE FCC'S REQUIREMENTS FOR DESIGNATION AS AN ETC?**

16 A. No. The FCC's *Universal Service Order* creates a more rigorous ETC designation  
17 process which the FCC believes will (if applied by the FCC and the state  
18 commissions) improve the long-term sustainability of the universal service fund.  
19 One of the new requirements recommended by the FCC is that a carrier requesting  
20 designation as an ETC "provide a five-year plan demonstrating how high-cost

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<sup>2</sup> *Id.* at ¶ 61.

1 support will be used to improve its coverage, service quality or capacity in every  
2 wire center for which it seeks designation and expects to receive universal service  
3 support.”<sup>3</sup> Although Budget Phone provided a five-year plan as an attachment to  
4 Mr. Ron Munn’s direct testimony, the five-year plan did not contain a description of  
5 any specific improvements to quality, capacity, or coverage. The FCC requires a  
6 five-year plan to be included with an application for ETC designation that is filed  
7 with the FCC.

8 **Q. AT THIS TIME WOULD YOU SUPPORT BUDGET PHONE’S**  
9 **APPLICATION FOR ETC DESIGNATION?**

10 **A.** At this time there are no Commission guidelines in place by which to compare  
11 Budget Phone’s application. That is why ORS requests that the Commission hold  
12 Budget Phone’s application in abeyance until such time as the Commission has  
13 determined whether to allow multiple ETCs and has adopted guidelines by which to  
14 judge non-rural, landline carrier applications for ETC designation. Guidelines are  
15 necessary to evaluate all of the applications by the same standard, rather than  
16 handling each application on a case by case basis

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<sup>3</sup> *Id.* at ¶ 2.

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1 **Q. IN CONCLUSION, DOES ORS HAVE ANY RECOMMENDATIONS?**

2 A. In order to ensure that all state ETC designations are consistent with the public  
3 interest, ORS recommends that the Commission hold Budget Phone's application for  
4 ETC designation in abeyance and initiate a rulemaking proceeding in order to  
5 determine whether to allow multiple ETCs and to establish guidelines by which all  
6 ETC applications will be evaluated.

7 **Q. DOES THIS CONCLUDE YOUR TESTIMONY?**

8 A. Yes, it does.

BEFORE THE PUBLIC SERVICE COMMISSION

In re: State certification of rural telecommunications carriers pursuant to 47 C.F.R. 54.314.	DOCKET NO. 010977-TL ORDER NO. PSC-05-0824-FOF-TL ISSUED: August 15, 2005
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The following Commissioners participated in the disposition of this matter:

BRAULIO L. BAEZ, Chairman  
J. TERRY DEASON  
RUDOLPH "RUDY" BRADLEY  
LISA POLAK EDGAR

FINAL ORDER REGARDING  
RURAL LOCAL EXCHANGE COMPANY CERTIFICATION  
AND REPORTING REQUIREMENTS

BY THE COMMISSION:

I. Case Background

Section 254(e) of the Telecommunications Act of 1996 provides that a carrier that receives universal service support "...shall use that support only for the provision, maintenance, and upgrading of facilities and services for which the support is intended." In its Fourteenth Report and Order, Twenty-Second Order on Reconsideration, and Further Notice of Proposed Rulemaking in CC Docket No. 00-256 (the Rural Task Force Order; hereafter, the RTF Order) the Federal Communications Commission (FCC) modified its rules pertaining to the provision of high-cost support for rural telephone companies. The FCC adopted a rule requiring that states who wish for rural carriers in their territory to receive federal high-cost support must file a certification annually with the FCC and with the Universal Service Administrative Company (USAC). This certification is to affirm that the federal high-cost funds flowing to rural carriers in the state, or to any competitive eligible telecommunications carriers seeking support for serving customers within a rural carrier's service area, will be used in a manner that comports with Section 254(e). The rule provisions are:

§54.314. State certification of support for rural carriers.

- (a) *State certification.* States that desire rural incumbent local exchange carriers and/or eligible telecommunications carriers serving lines in the service area of a rural incumbent local exchange carrier within their jurisdiction to receive support pursuant to §§54.30 (local switching support), 54.305 (sale or transfer of exchanges), and/or 54.307 (support to competitive ETC) of this part and/or part 36, subpart F of this chapter must file an annual certification with the Administrator and the Commission stating that all federal high-cost support provided to such

carriers within that State will be used only for the provision, maintenance, and upgrading of facilities and services for which the support is intended. . . .

- (c) *Certification format.* A certification pursuant to this section may be filed in the form of a letter from the appropriate regulatory authority for the State, and shall be filed with both the Office of the Secretary of the Commission clearly referencing CC Docket No. 96-45, and with the Administrator of the high-cost universal service support mechanism, on or before the deadlines set forth below in subsection (d). . . .

The FCC requires that certifications for the next calendar funding year must be submitted by the preceding October 1; thus, in order for a rural carrier to be eligible for high-cost universal service support for all of calendar year 2006, certification must be submitted by October 1, 2005.

On a related note, on March 17, 2005, the FCC released Order No. FCC 05-46, establishing new annual certification and reporting requirements to comply with the conditions of ETC designation and to ensure universal service funds are used for their intended purposes. These additional requirements are also addressed herein.

This Order pertains to our certification of Florida's rural LECs for 2006.<sup>1</sup>

## II. Certification

Unless we submit certifications to the FCC and to USAC by October 1, 2005, Florida's rural carriers will receive no interstate high-cost universal service funds during the first quarter of 2006, and would forego all federal support if certification from this Commission is not eventually submitted. Other than Frontier, Florida's rural ETCs are under intrastate price regulation; thus, our regulatory oversight over their operations is somewhat limited. However, the FCC anticipated that certain state commissions may have restricted authority:

In the case of non-rural carriers, we concluded that states nonetheless may certify to the FCC that a non-rural carrier in the state had accounted to the state commission for its receipt of federal support, and that such support will be "used only for the provision, maintenance and upgrading of facilities and services for which the support is intended." We determined that, in states in which the state commission has limited jurisdiction over such carriers, the state need not initiate the certification process itself. . . . We conclude that this approach is equally appropriate here with regard to rural carriers and competitive eligible

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<sup>1</sup> There is a companion FCC rule, §54.313, associated with state certification for non-rural carriers in order for them to receive high-cost model support or interim hold-harmless support.

telecommunications carriers serving lines in the service area of a rural local exchange carrier.

RTF Order, supra, at ¶188.

As has been done in prior years, each of the seven Florida rural ETCs has provided the Commission with an affidavit (see Attachments A through G) in which they have certified that their use of interstate high-cost universal service support received during 2006 will comport with Section 254(e) of the Act and applicable FCC rules. Given these ETC certifications, we hereby certify to the FCC and to the USAC that these ETCs will be using interstate high-cost universal service support in 2006 in a manner that complies with Section 254(e).

### III. New Certification and Reporting Requirements

The FCC's rules currently require all ETCs to make an annual certification, on or before October 1, that high-cost universal service support will be used for its intended purposes.<sup>2</sup> By Order No. FCC 05-46, the FCC maintained and augmented this requirement. Every ETC designated by the FCC who desires high cost support must now submit the following information on an annual basis starting October 1, 2006:

- (1) progress reports on the ETC's five-year service quality improvement plan, including maps detailing progress towards meeting its plan targets, an explanation of how much universal service support was received and how the support was used to improve signal quality, coverage, or capacity; and an explanation regarding any network improvement targets that have not been fulfilled.<sup>3</sup> The information should be submitted at the wire center level;
- (2) detailed information on any outage lasting at least 30 minutes, for any service area in which an ETC is designated for any facilities it owns, operates, leases, or otherwise utilizes that potentially affect at least ten percent of the end users served in a designated service area, or that potentially affect a 911 special facility (as defined in subsection (e) of section 4.5 of the *Outage Reporting Order*).<sup>4</sup> An outage is defined as a significant degradation in the ability of an end user to establish and maintain a channel of communications as a result of failure or degradation in the performance of a communications provider's network.<sup>5</sup> Specifically, the ETC's annual report must include: (1) the date and time of onset of the outage; (2) a brief description of the outage

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<sup>2</sup>47 C.F.R. §§ 54.313, 54.314.

<sup>3</sup>If an ETC had not previously submitted a network improvement plan to the Commission, it should do so with its first reporting compliance filing. An ETC that has not previously submitted a network improvement plan should include a description of improvements or upgrades it has made since the date of its initial designation.

<sup>4</sup>See *New Part 4 of the Commission's Rules Concerning Disruptions to Communications*, Report and Order and Further Notice of Proposed Rulemaking, 19 FCC Rcd 16830, 16923-24, § 4.5 (2004) (*Outage Reporting Order*).

<sup>5</sup>See *Outage Reporting Order*, 19 FCC Rcd at 16925, § 4.9.

and its resolution; (3) the particular services affected; (4) the geographic areas affected by the outage; (5) steps taken to prevent a similar situation in the future; and (6) the number of customers affected;<sup>6</sup>

- (3) the number of requests for service from potential customers within its service areas that were unfulfilled for the past year. The ETC must also detail how it attempted to provide service to those potential customers;
- (4) the number of complaints per 1,000 handsets or lines;
- (5) certification that the ETC is complying with applicable service quality standards and consumer protection rules;
- (6) certification that the ETC is able to function in emergency situations;<sup>7</sup>
- (7) certification that the ETC is offering a local usage plan comparable to that offered by the incumbent LEC in the relevant service areas; and
- (8) certification that the carrier acknowledges that the Commission may require it to provide equal access to long distance carriers in the event that no other eligible telecommunications carrier is providing equal access within the service area.

This newly required information will initially be due on October 1, 2006, and thereafter annually on October 1 of each year, at the same time as the carrier's certification that the universal service funds are being used consistent with the Act.<sup>8</sup> The FCC believes that these reporting requirements are reasonable and consistent with the public interest and the Act, and will further the FCC's goal of ensuring that ETCs satisfy their obligation under Section 214(e) of the Act to provide supported services throughout their designated service areas.<sup>9</sup> It believes that the administrative burden placed on carriers is outweighed by strengthening the requirements and certification guidelines to help ensure that high-cost support is used in the manner that it is intended, and will help prevent carriers from seeking ETC status for purposes

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<sup>6</sup>The FCC did not adopt the threshold established in the *Outage Reporting Order* that, for an outage to be included in a report, it must potentially affect 900,000 user minutes of either telephony or associated data. See *Outage Reporting Order*, 19 FCC Rcd at 16925, § 4.9. In particular, the FCC apparently believes that a user minute threshold may be insufficient for the purpose of determining ETC functionality during emergency situations in designated service areas because populations can vary. As a result, the FCC instead requires that ETCs report any outages that potentially affect 10% or more of their customers in a designated service area. Unlike the *Outage Reporting Order*, however, the FCC requires these reports annually instead of shortly after the outage occurs.

<sup>7</sup>If an ETC had not previously submitted a plan demonstrating how it will remain functional in an emergency, it should do so with its first reporting compliance filing.

<sup>8</sup>See e.g., 47 C.F.R. § 54.313; 54.314.

<sup>9</sup>In addition, the FCC may institute an inquiry on its own motion to examine any ETC's records and documentation to ensure that the high-cost support it receives is being used "only for the provision, maintenance, and upgrading of facilities and services" in the areas where it is designated as an ETC. 47 U.S.C. §§ 220, 403; 47 C.F.R. §§ 54.313, 54.314.

unrelated to providing rural and high-cost consumers with access to affordable telecommunications and information services.<sup>10</sup>

In paragraphs 71 and 72 of Order FCC 05-46, the FCC suggests state commissions adopt these additional reporting requirements:

State commissions should apply the reporting requirements to all ETCs, not just competitive ETCs. In addition, state commissions may require the submission of any other information that they believe is necessary to ensure that ETCs are operating in accordance with applicable state and federal requirements. In doing so, states should conform these requirements with any similar conditions imposed on previously designated ETCs in order to avoid duplicative or inapplicable reporting requirements. Individual state commissions are uniquely qualified to determine what information is necessary to ensure that ETCs are complying with all applicable requirements, including state-specific ETC eligibility requirements.

If a review of the data submitted by an ETC indicates that the ETC is no longer in compliance with the Commission's criteria for ETC designation, the FCC may suspend support disbursements to that carrier or revoke the carrier's designation as an ETC. Likewise, as the Joint Board noted, state commissions possess the authority to rescind ETC designations for failure of an ETC to comply with the requirements of section 214(e) of the Act or any other conditions imposed by the state.

The new high cost annual certification and reporting requirements should prove helpful to our staff in monitoring Commission-designated ETCs to ensure that universal service funds are being used appropriately. Therefore, we hereby adopt the new high-cost annual certification and reporting requirements established in Order No. FCC 05-46 for all FPSC designated ETCs desiring high cost support. We do, however, clarify that, to the extent a Florida ETC believes that it has already submitted a report or information to us that would comply with the list above, it may certify in its annual letter which proceeding and on what date such report or information was provided to us, in lieu of resubmitting the required information.

#### IV. Conclusion

Pursuant to FCC Rule 54.314, state commissions must certify yearly that their rural LECs will use interstate high-cost universal service support in a manner that comports with Section 254(e) in order for the carriers to obtain high-cost support. We anticipate that in subsequent years, Florida's rural LECs will continue to seek interstate high-cost universal service support and will again submit affidavits to this Commission. Such affidavits must be received on a schedule that allows this Commission to issue an Order and, thereafter, forward a letter to the FCC and the USAC prior to October 1. Accordingly, this docket shall remain open to handle certifications for the coming year.

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<sup>10</sup>See 47 U.S.C. § 254(b)(3).

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission, and we hereby certify that ALLTEL Florida, Inc., Frontier Communications of the South, Inc., GTC, Inc., ITS Telecommunications Systems, Inc., Northeast Florida Telephone Company, Inc., d/b/a NEFCOM Communications, TDS Telecom, and Smart City Telecom will be using interstate high-cost universal service support in 2006 in a manner that complies with Section 254(e) of the federal Telecommunications Act of 1996. It is further

ORDERED that we hereby adopt the new high-cost annual certification and reporting requirements established in Order No. FCC 05-46 for all Florida Commission-designated ETCs desiring high cost support, as specifically clarified in the body of this Order. It is further

ORDERED that this Docket shall remain open.

By ORDER of the Florida Public Service Commission this 15th day of August, 2005.

BLANCA S. BAYÓ, Director  
Division of the Commission Clerk  
and Administrative Services

By: /s/ Hong Wang  
Hong Wang, Supervisor  
Case Management Review Section

This is a facsimile copy. Go to the Commission's Web site,  
<http://www.floridapsc.com> or fax a request to 1-850-413-  
7118, for a copy of the order with signature.

(SEAL)

BK

**NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW**

The Florida Public Service Commission is required by Section 120.569(1), Florida Statutes, to notify parties of any administrative hearing or judicial review of Commission orders that is available under Sections 120.57 or 120.68, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing or judicial review will be granted or result in the relief sought.

Any party adversely affected by the Commission's final action in this matter may request:

- 1) reconsideration of the decision by filing a motion for reconsideration with the Director, Division of the Commission Clerk and Administrative Services, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, within fifteen (15) days of the issuance of this order in the form prescribed by Rule 25-22.060, Florida Administrative Code; or
- 2) judicial review by the Florida Supreme Court in the case of an electric, gas or telephone utility or the First District Court of Appeal in the case of a water and/or wastewater utility by filing a notice of appeal with the Director, Division of the Commission Clerk and Administrative Services and filing a copy of the notice of appeal and the filing fee with the appropriate court. This filing must be completed within thirty (30) days after the issuance of this order, pursuant to Rule 9.110, Florida Rules of Appellate Procedure. The notice of appeal must be in the form specified in Rule 9.900(a), Florida Rules of Appellate Procedure.